

Assembly Bill No. 392

CHAPTER 660

An act to add Section 10176.1 to the Business and Professions Code, to add Section 17423.1 to the Financial Code, and to add Section 12414.31 to the Insurance Code, relating to escrow agents.

[Approved by Governor October 9, 2001. Filed with
Secretary of State October 10, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

AB 392, Maddox. Escrow agents.

Existing law subjects the escrow industry to various laws and regulations under the oversight of the Real Estate Commissioner, the Commissioner of Corporations, or the Insurance Commissioner.

This bill would require the commissioners to notify each other when taking enforcement or disciplinary action related to certain escrow services. The bill would require the Department of Real Estate, the Department of Corporations, and the Department of Insurance to each maintain a Web site that displays a database of individuals who have been subject to disciplinary action related to the escrow industry.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares that:

(a) The escrow industry in California is regulated by several different governmental agencies, depending on who is performing the escrow services, and it is of critical importance for the various regulatory agencies to cooperate with each other, and share information where it is in the public interest to coordinate regulatory action.

(b) It is of particular importance for the various regulators to cooperate when one regulator is taking action against a person for serious malfeasance or misconduct that is resulting in a suspension, restriction, revocation or other prohibition on the person's privilege to work in the escrow industry.

(c) There is a substantial governmental interest in ensuring that persons who are being restricted or barred from one sector of the escrow industry as a result of the harm to the public that they have caused are not able to easily shift to employment in another sector of the escrow industry.

(d) It is the purpose of this legislation to establish a mechanism to enable, and to affirmatively encourage the various regulators to

cooperate with each other where enforcement action is being taken against a person employed in the escrow industry.

SEC. 2. Section 10176.1 is added to the Business and Professions Code, to read:

10176.1. (a) (1) Whenever the commissioner takes any enforcement or disciplinary action against a licensee, and the enforcement or disciplinary action is related to escrow services provided pursuant to paragraph (4) of subdivision (a) of Section 17006 of the Financial Code, upon the action becoming final the commissioner shall notify the Insurance Commissioner and the Commissioner of Corporations of the action or actions taken. The purpose of this notification is to alert the departments that enforcement or disciplinary action has been taken, if the licensee seek or obtains employment with entities regulated by the departments.

(2) The commissioner shall provide the Insurance Commissioner and the Commissioner of Corporations, in addition to the notification of the action taken, with a copy of the written accusation, statement of issues, or order issued or filed in the matter and, at the request of the Insurance Commissioner or the Commissioner of Corporations, with any underlying factual material relevant to the enforcement or disciplinary action. Any confidential information provided by the commissioner to the Insurance Commissioner or the Commissioner of Corporations shall not be made public pursuant to this section. Notwithstanding any other provision of law, the disclosure of any underlying factual material to the Insurance Commissioner or the Commissioner of Corporations shall not operate as a waiver of confidentiality or any privilege that the commissioner may assert.

(b) The commissioner shall establish and maintain, on the Web site maintained by the Department of Real Estate, a database of its licensees, including those who have been subject to any enforcement or disciplinary action that triggers the notification requirements of this section. The database shall also contain a direct link to the databases, described in Section 17423.1 of the Financial Code and Section 12414.31 of the Insurance Code and required to be maintained on the Web sites of the Department of Corporations and the Department of Insurance, respectively, of persons who have been subject to enforcement or disciplinary action for malfeasance or misconduct related to the escrow industry by the Insurance Commissioner and the Commissioner of Corporations.

(c) There shall be no liability on the part of, and no cause of action of any nature shall arise against, the State of California, the Department of Real Estate, the Real Estate Commissioner, any other state agency, or any officer, agent, employee, consultant, or contractor of the state, for



the release of any false or unauthorized information pursuant to this section, unless the release of that information was done with knowledge and malice, or for the failure to release any information pursuant to this section.

SEC. 3. Section 17423.1 is added to the Financial Code, to read:

17423.1. (a) (1) Whenever the commissioner takes any enforcement or disciplinary action pursuant to Section 17423, upon the action becoming final the commissioner shall notify the Real Estate Commissioner and the Insurance Commissioner of the action or actions taken. The purpose of this notification is to alert the departments that enforcement or disciplinary action has been taken, if the person seeks or obtains employment with entities regulated by the departments.

(2) The commissioner shall provide the Real Estate Commissioner and the Insurance Commissioner, in addition to the notification of the action taken, with a copy of the written accusation, statement of issues, or order issued or filed in the matter and, at the request of the Real Estate Commissioner or Insurance Commissioner, with any underlying factual material relevant to the enforcement or disciplinary action. Any confidential information provided by the commissioner to the Insurance Commissioner or the Real Estate Commissioner shall not be made public pursuant to this section. Notwithstanding any other provision of law, the disclosure of any underlying factual material to the Insurance Commissioner or the Real Estate Commissioner shall not operate as a waiver of confidentiality or any privilege that the commissioner may assert.

(b) The commissioner shall establish and maintain, on the Web site maintained by the Department of Corporations, a separate and readily identifiable database of all persons who have been subject to any enforcement or disciplinary action that triggers the notification requirements of this section. The database shall also contain a direct link to the databases, described in Section 10176.1 of the Business and Professions Code and Section 12414.31 of the Insurance Code and required to be maintained on the Web sites of the Department of Real Estate and the Department of Insurance, respectively, of persons who have been subject to enforcement or disciplinary action for malfeasance or misconduct related to the escrow industry by the Insurance Commissioner and the Real Estate Commissioner.

(c) There shall be no liability on the part of, and no cause of action of any nature shall arise against, the State of California, the Department of Corporations, the Commissioner of Corporations, any other state agency, or any officer, agent, employee, consultant, or contractor of the state, for the release of any false or unauthorized information pursuant to this section, unless the release of that information was done with



knowledge and malice, or for the failure to release any information pursuant to this section.

SEC. 4. Section 12414.31 is added to the Insurance Code, to read:

12414.31. (a) (1) Whenever the commissioner takes any formal enforcement or disciplinary action directly against an employee of a title insurer, underwritten title company, or controlled escrow company, for malfeasance or misconduct committed by the employee in his or her performance of escrow related services, upon the action becoming final the commissioner shall notify the Real Estate Commissioner and the Commissioner of Corporations of the action or actions taken. The purpose of this notification is to alert the departments that enforcement or disciplinary action has been taken, if the employee seeks or obtains employment with entities regulated by the departments.

(2) The commissioner shall provide the Real Estate Commissioner and the Commissioner of Corporations, in addition to the notification of the action taken, with a copy of the written accusation, statement of issues, or order issued or filed in the matter and, at the request of the Real Estate Commissioner or Commissioner of Corporations, with any underlying factual material relevant to the enforcement or disciplinary action. Any confidential information provided by the commissioner to the Commissioner of Corporations or the Real Estate Commissioner shall not be made public pursuant to this section. Notwithstanding any other provision of law, the disclosure of any underlying factual material to the Commissioner of Corporations or the Real Estate Commissioner shall not operate as a waiver of confidentiality or any privilege that the commissioner may assert.

(b) The commissioner shall establish and maintain, on the Web site maintained by the Department of Insurance, a separate and readily identifiable database of all persons who have been subject to any enforcement or disciplinary action that triggers the notification requirements of this section. The database shall also contain a direct link to the databases, described in Section 10176.1 of the Business and Professions Code and Section 17423.1 of the Financial Code and required to be maintained on the Web sites of the Department of Real Estate and the Department of Corporations, respectively, of persons who have been subject to enforcement or disciplinary action for malfeasance or misconduct related to the escrow industry by the Commissioner of Corporations and the Real Estate Commissioner.

(c) There shall be no liability on the part of, and no cause of action of any nature shall arise against, the State of California, the Department of Insurance, the Insurance Commissioner, any other state agency, or any officer, agent, employee, consultant, or contractor of the state, for the release of any false or unauthorized information pursuant to this section,



unless the release of that information was done with knowledge and malice, or for the failure to release any information pursuant to this section.

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